

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
DETROIT DIVISION

IN RE:

BRIAN DEWAYNE SMELLEY,

Debtor.

Case No. 20-42656-mar
Chapter 7
Hon. Mark A. Randon

**SECURED CREDITOR AMERICREDIT FINANCIAL SERVICES, INC., D/B/A
GM FINANCIAL'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

Secured Creditor AmeriCredit Financial Services, Inc., d/b/a GM Financial, pursuant to Section 362 of the United States Bankruptcy Code, moves this honorable Court for entry of an order granting it relief from the automatic stay and, in support thereof, says as follows:

1. Debtor initially filed this bankruptcy as a Chapter 13 case on February 25, 2020 and it was subsequently converted to a Chapter 7 case on March 26, 2021. At the time of filing, Debtor was indebted to Secured Creditor on a 2014 Ford Focus motor vehicle loan. The current balance on the loan is \$14,373.19 and the current arrearage on the loan is \$3,455.66; photocopies of the Retail Installment Contract and RD-108 evidencing the lien are marked as composite Exhibit A and attached hereto.

2. Under the terms of the contract, monthly payments are to be made to Secured Creditor. Prior to the filing of the bankruptcy, Debtor defaulted under the terms of the contract by failing to make the payments due and Debtor is currently in default under the terms of the contract with Secured Creditor.

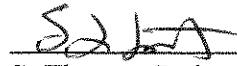
3. The NADA retail value of the 2014 Ford Focus is \$13,600.00; a photocopy of the NADA valuation is marked as part of composite Exhibit A and attached hereto.

4. Secured Creditor is entitled to an order granting it relief from the automatic stay with regard to the aforementioned vehicle because there is no equity in the vehicle, the Debtor has not provided adequate protection, nor offered to provide adequate protection, to Secured Creditor, the vehicle is not necessary to Debtor's reorganization, the Debtor is in default under the terms of the contract with Secured Creditor, and the Debtor has not reaffirmed the loan, redeemed the vehicle, nor surrendered the vehicle. Also, upon information and belief, Debtor is not maintaining full insurance coverage on the vehicle.

5. Before filing this Motion, Creditor sought the concurrence of the Debtor and the Trustee, but concurrence has not been granted or Debtor has, and/or the Trustee has, not responded to the request.

WHEREFORE, Secured Creditor AmeriCredit Financial Services, Inc., d/b/a GM Financial, prays that this honorable Court grant its Motion and enter an order granting it relief from the automatic stay to exercise its lien and secured rights against the 2014 Ford Focus, including repossession and sale of the same, and that the order shall be effective immediately notwithstanding the provisions of Fed.R.Bankr.P. 4001(a)(3), and for such other and further relief as may be appropriate under the circumstances.

Date: April 22, 2021



S. Thomas Padgett (P31748)
DeBrincat, Padgett, Kobliska & Zick
Attorney for Creditor
34705 W. Twelve Mile Rd., Suite 311
Farmington Hills, MI 48331
(248) 553-4333
Michiganlawyer@aol.com

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ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY

THIS MATTER having come before the Court on Secured Creditor AmeriCredit Financial Services, Inc., d/b/a GM Financial's Motion for Relief from the Automatic Stay, the Motion having been served on the Debtor, Debtor's counsel, and the Chapter 7 Trustee, and the Court being otherwise fully advised in the premises; IT IS ORDERED:

1. Secured Creditor AmeriCredit Financial Services, Inc., d/b/a GM Financial, is hereby granted relief from the automatic stay to pursue relief that may be available to it pursuant to applicable law and the terms and provisions of the contract for Debtor's purchase of one 2014 Ford Focus motor vehicle, vehicle identification number 1FADP3L93EL397790, including repossession and sale of the vehicle.

2. The entry of this Order shall be effective immediately notwithstanding the provisions of Fed.R.Bankr.P. 4001(a)(3). All other terms and provisions of the automatic stay shall remain in full force and effect.

U.S. Bankruptcy Judge

Order prepared by:



S. Thomas Padgett (P31748)
Attorney for Creditor

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Address: 2691 E. Walton Blvd.
Auburn Hills, MI 48326

Last four digits of Social Security No.: 8778

**NOTICE OF FILING OF SECURED CREDITOR'S MOTION
FOR RELIEF FROM THE AUTOMATIC STAY**

Secured Creditor AmeriCredit Financial Services, Inc., d/b/a GM Financial, has filed papers with the court seeking relief from the automatic stay.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one).

If you do not want the court to grant the Motion, or if you want the court to consider your views on the Motion, within 14 days from the date of this Notice, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at¹:

United States Bankruptcy Court
211 W. Fort St.
Detroit, MI 48226

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also mail a copy to:

S. Thomas Padgett, Esquire
DeBrincat, Padgett, Kobliska & Zick
34705 W. Twelve Mile Rd., Suite 311
Farmington Hills, MI 48331


Stephen Parker, Esquire
Attorney for Debtor
35 West Huron, Ste. 302
Pontiac, MI 48342

Homer W. McClarty
Chapter 7 Trustee
19785 W. 12 Mile Rd., Ste. 331
Southfield, MI 48076

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: April 22, 2021



S. Thomas Padgett (P31748)
DeBrincat, Padgett, Kobliska & Zick
Attorney for Creditor
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**MEMORANDUM OF LAW IN SUPPORT OF SECURED CREDITOR'S
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

In support of its Motion, Secured Creditor AmeriCredit Financial Services, Inc., d/b/a GM Financial relies upon the provisions of Section 362 of the United States Bankruptcy Code.

Date: April 22, 2021



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 22, 2021, true and correct copies of Secured Creditor AmeriCredit Financial Services, Inc., d/b/a GM Financial's Motion for Relief from the Automatic Stay, Memorandum of Law, Notice of Filing of Motion, Statement Regarding Corporate Ownership and proposed Order were served upon the following party electronically:

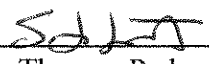
Stephen Parker, Esquire
Attorney for Debtor
35 West Huron, Ste. 302
Pontiac, MI 48342

Homer W. McClarty
Chapter 7 Trustee
19785 W. 12 Mile Rd., Ste. 331
Southfield, MI 48076

and upon the following party by depositing said copies in the U.S. Mail, postage prepaid:

Brian Smelley, Debtor
2691 E. Walton Blvd.
Auburn Hills, MI 48326

Dated: April 22, 2021



S. Thomas Padgett (P31748)
DeBrincat, Padgett, Kobliska & Zick
Attorney for Creditor
34705 W. Twelve Mile, Ste. 311
Farmington Hills, MI 48331
(248) 553-4333
Michiganlawyer@aol.com

Receipt for RD-108 Dealer Transaction

Dealer
RANDY WISE FORD
Address
968 S ORTONVILLE RD
City
ORTONVILLE, MI 48462

Dealer License No.
A2889

Odometer
049468 A

A = Actual mileage
B = Not actual mileage
C = Exceeds mechanical limits of odometer



Transaction Type:
TRANS TITLE/ORIG PLATE
603C3050221

MI
NO

Error/Flash Condition:

Error/Flash Approval Reason:

Validation: 02012018 MC G032 603 0730 991.04 603G0320730 049468 A *S.I. RECORDED*				
Plate No. DVG3062	Expires on 07/05/2018	Months 06		
Year 2014	Make FORD	Body Style 4D	Code 01	County 63
Vehicle No. 1FADP3L93EL397790		Fee Cat. or Wt. 000024	License Fee 62.00	
Driver License No/PIDs of All Owners/Lessees [REDACTED]			Title 15.00	
			Title Late Fee 0.00	
Complete Name(s) and Address(es) of All Owners or Lessors BRIAN DEWAYNE SMELLEY 6417 HARRIET DR WATERFORD, MI 48327			Tax 914.04	
			Transfer Fee 0.00	
			Total 991.04	
Complete Name(s) and Address(es) of Lessees NONE			Full Rights to Survivor N	

First Secured Interest AMERICREDIT FINANCIAL SERVICES PO BOX 1510 COCKEYSVILLE, MD 21030	Filing Date 01/29/2018
Second Secured Interest NONE	Filing Date
Purchase Price of Vehicle	15000.00

Dealer Comment:
TAB NUMBER: 5707620



Vehicle Information

Vehicle: 2014 Ford Focus Hatchback 5D ST 2.0L
I4 Turbo
Region: Central
Period: April 20, 2021
VIN: 1FADP3L93EL397790
Mileage: 97,500
Base MSRP: \$24,115
Typically Equipped MSRP: \$24,450

NADA Used Cars/Trucks Values

	Base	Mileage Adj.	Option Adj.	Adjusted Value
Monthly				
Trade-In				
Rough	\$9,050	N/A	N/A	\$9,050
Average	\$10,125	N/A	N/A	\$10,125
Clean	\$10,975	N/A	N/A	\$10,975
Clean Loan	\$9,900	N/A	N/A	\$9,900
Clean Retail	\$13,600	N/A	N/A	\$13,600

Selected Options

	Trade-In/Loan	Retail
Bluetooth Connection	w/body	w/body
Aluminum/Alloy Wheels	w/body	w/body
Fog Lights	w/body	w/body
Steering Wheel Mounted Audio Controls	w/body	w/body